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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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ASSOCIATED PRESS,	:
	: SUPPLEMENTAL
Plaintiff,	: DECLARATION OF
	: <u>KAREN L. HECKER</u>
- v.-	:
	: 06 Civ. 1939 (JSR)
UNITED STATES DEPARTMENT	:
OF DEFENSE,	:
	:
Defendant.	:
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KAREN L. HECKER hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an Associate Deputy General Counsel in the Office of General Counsel of the United States Department of Defense (“DOD”). Unless otherwise indicated, the statements in this declaration are based upon my personal knowledge and information obtained by me in the course of my official duties. I make this declaration in support of DOD’s Reply Memorandum of Law in Further Support of its Motion for Partial Summary Judgment.

Electronic Posting of FOIA Releases

2. The Electronic Freedom of Information Act Amendments of 1996 require each federal agency to make available for public inspection and copying “copies of all records ... which have been

released to any person [under a FOIA request] ... and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records." 5 U.S.C. Section 552(a)(2)(D), as amended by Public Law No. 104-231, 110 Stat. 3048, effective March 31, 1997. The agency is required to make such records available by computer telecommunications, i.e. through an electronic reading room. *Id.* DOD's FOIA regulation was subsequently updated to include these requirements. *See* DoD Freedom of Information Act Program, DOD 5400.7-R, available at http://www.dtic.mil/whs/directives/corres/pdf/54007r_0998/p54007r.pdf. This regulation instructs that a determination of whether records fit within this category should be based on certain factors, including the DOD's previous experience with similar records, the identity and number of requesters and whether there is widespread press, historic or commercial interest in the records. *See* C2.1.2.4.

3. If photographs of any individuals detained by the Department of Defense at Guantanamo are released to the Associated Press under the Freedom of Information Act, the DOD would post the photographs in its electronic reading room, based on the substantial number of press inquiries that would be expected regarding these records.

**Attendance at Combatant Status Review Tribunals
and Administrative Review Boards**

4. On May 15, 2006, the DOD released to the Associated Press a list of 759 individuals detained by the DOD at Guantanamo from January 2002 through May 2006. More than two hundred of those 759 individuals were transferred or released from Guantanamo before the Combatant Status Review Tribunal (CSRT) process began. Of the remaining detainees, all of whom were

subject to CSRT or Administrative Review Board ("ARB") proceedings, only approximately 360 detainees (65 percent) elected to participate in the CSRTs and/or the ARBs. The press was present at only 38 of the CSRTs and 21 of the ARBs, at which no photographs were permitted to be taken.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 5, 2006.

Karen L. Hecker

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